

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SOFIA VASQUEZ, HERMENEGILDO CANDIA, and
MAIRA NARANJO,

Plaintiffs,

-v-

NUEVO TULCINGO AZTECA CORP. d/b/a NUEVO
AZTECA, GILBERTO MOLINA, and ANGEL MOLINA,

Defendants.

CIVIL ACTION NO. 23 Civ. 355 (PGG) (SLC)

ORDER

SARAH L. CAVE, United States Magistrate Judge.

On April 4, 2024, Plaintiffs filed a motion for a default judgment (ECF Nos. 24–25 (the “Motion”)), which the Honorable Paul G. Gardephe has referred to the undersigned for a report and recommendation. (ECF No. 33).

On February 21, 2024, the Court ordered that Plaintiffs: (i) by February 26, 2024, file contemporaneous billing records to support their request for attorneys’ fees, and (ii) by March 1, 2024, serve on Defendants its billing records; the documents filed at ECF Nos. 20–25, 27–30, and 32–33; and the February 21, 2024 Order, and file proof of service. (ECF No. 34 (the “Feb. 21 Order”)). On February 26, 2024, Plaintiffs filed contemporaneous billing records. (ECF No. 35). Plaintiffs did not file proof that they served Defendants with the above-referenced documents by the March 1, 2024 deadline, and therefore did not comply with the Feb. 21 Order.

On March 4, 2024, the Court sua sponte extended to March 8, 2024 Plaintiffs’ time to comply with the Feb. 21 Order and to “serve on Defendants the documents filed at ECF Nos. 20–25, 27–30, and 32–35, and this Order, and file proof of service.” (ECF No. 36 (the “Mar. 4 Order”)). Although being expressly “warned that the failure to do so by the deadline will result in a

recommendation to the Honorable Paul G. Gardephe to dismiss this action for failure to prosecute” (id.), Plaintiffs did not file proof of service by the deadline, and therefore did not comply with the Mar. 4 Order.

As a **final** courtesy, the Court sua sponte EXTENDS to **March 18, 2024** Plaintiffs’ time to comply with the Court’s Orders and serve on Defendants the documents filed at ECF Nos. 20–25, 27–30, 32–36, and this Order, and file proof of service. Proper service is a prerequisite to the Court’s analysis of and report and recommendation on the Motion. See Local Civ. R. 55.2(c) (requiring that default judgment motions be served on the parties against whom judgment is sought, and that proof of service be filed); see also Campbell v. Isolator Fitness, Inc., No. 23 Civ. 2286, 2023 WL 6444904 (JGLC) (BCM), at *2–3 (S.D.N.Y. Oct. 3, 2023) (noting that “[s]ervice of the motion on non-appearing defendants is of particular importance because mailing notice of such an application is conducive to both fairness and efficiency,” and denying default judgment motion for failure to serve) (citations omitted). Plaintiffs are again expressly warned that **failure to do so by the deadline will result in denial of the Motion and a recommendation to Judge Gardephe to dismiss this action for failure to prosecute.**

Given Plaintiffs’ delay, Defendants’ deadline to respond to the Motion as set forth in the Feb. 21 Order and extended in the Mar. 4 Order is EXTENDED to **April 1, 2024**. **If Defendants (1) fail to respond to the Motion, or (2) fail to contact my Chambers by the date their response to the Motion is due, I intend to issue a Report & Recommendation concerning the Motion and Plaintiffs’ damages based on Plaintiffs’ written submissions alone, without an in-court hearing.** See Trans. Marine Claims Agency, Inc. v. Ace Shipping Corp., 109 F.3d 105, 111 (2d Cir. 1997) (“it [is] not necessary for the District Court to hold a hearing, as long as it ensured that there was a

basis for the damages specified in the default judgment”) (quoting Fustok v. ContiCommodity Servs., Inc., 873 F.2d 38, 40 (2d Cir. 1989)).

Dated: New York, New York
March 11, 2024

SO ORDERED.


SARAH L. CAVE
United States Magistrate Judge